

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9043 OF 2005

Shri Vasant Rao Nayaku Gavali
(since deceased) through L.Rs. ... Petitioner

V/s

Shri Prakash Shripad Patki ... respondent

Mr. Amit Borkar for the petitioner.

Mr. Rahul Kulkarni for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 21ST FEBRUARY, 2006

P.C.:

1. Heard both sides. Perused the record.

2. This is a petition preferred by the petitioner herein against the order passed by the Addl. District Judge, Kolhapur, rejecting the application under Order 41 Rule 27 of the C.P.C. by which certain documents were sought to be produced at the appellate stage.

3. The respondent/plaintiff filed the suit for possession of the suit property under Sec.13(1)(G) of the Bombay Rent Act and after considering the evidence

and documents on record, the suit came to be decreed.

The petitioner defendant preferred the appeal in which course he wanted to produce certain documents in order to remove the vagueness in the evidence which was led before the Trial Court with submission that the Trial Court had misled itself by misleading the cross-examination of the defendant in the course of the trial.

It appears from the record that in the cross-examination, the petitioner admitted that C.T.S. No.3217 was belonging to him and said building was known as Guru Kripa building. There was one beauty parlour in the said building wherein a shop by name "Prakash Kesh Kartanalaya" was located near the said shop and that is the crux of contentions between the parties and it appears that the Trial Court was led to believe that said shop "Prakash Kesh Kartanalaya" was belonging to the petitioner/defendant and on that basis it was held that the plaintiff was entitled for decree of possession of the suit property.

4. However, in fact, it is contended on behalf of the petitioner that said "Prakash Kesh Kartanalaya" was the

shop not belonging to him but was located in adjacent to property of C.T.S. No. 3216 belonging to some other person for which purpose the documents were sought to be brought on record in the course of the appeal and application was made to that effect but came to be rejected and hence the present petition.

5. Perusal of the lower Court's order shows that it was of the view that production of the said document at the appellate stage would amount to filling of the lacuna which remained in the course of the trial. It was also observed that even without allowing the impugned document to be brought on record proper conclusion could be drawn by scrutinizing the record and evidence led during the course of the trial. In my considered view, this view taken by the lower Court not only erroneous but amounts to perverse because it is obvious that there was no opportunity for the present petitioner to lead the evidence to show that said "Prakash Kesh Kartananalaya" belongs to some other party and not himself. Moreover, the so-called admission made by the petitioner/defendant in the course of his cross-examination is not at all an admission by any stretch of imagination but bald statement is made that said "Prakash Kesh Kartanalaya" is located near his

shop. There is absolutely no supporting evidence to show that the shop belongs to either petitioner/defendant or he has any interest therein. In view of the facts and circumstances, it cannot be said that the appellate Court could have properly concluded the matter by scrutiny of other evidence on record especially when the trial Court relied upon the said so-called admission while passing the decree against the petitioner. Therefore, in the interest of justice it was necessary for the appellate Court to allow the document to be produced by invoking the discretionary power under Order 41 Rule 27 of the C.P.C. in order to appreciate the factual matrix in proper perspective.

6. In the result, the Rule is made absolute.

The petition is allowed. The order dated 18.10.2005 passed by the Addl. District Judge, Kolhapur is hereby set aside. The application under Order 41 Rule 27 of the Code Procedure Code filed by the petitioner stands allowed.

The lower appellate Court is directed to allow the petitioner to produce the said document and consider it on merits while adjudicating the appeal after giving

opportunity to both sides to deal with additional evidence in proper manner.

With these directions, the petition stands disposed of with no order as to costs.

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